

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**THE STATE NEEDS TO IMPROVE ITS
CONTROL OF CONSULTANT
AND SERVICE CONTRACTS**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-504

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OF CONSULTANT AND SERVICE CONTRACTS

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P-504

Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the Department of General Services' oversight of consultant and service contracts.

We conducted this audit to comply with Chapter 1208, Statutes of 1982.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

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SUMMARY

The Department of General Services (department) has not adequately monitored all contracts awarded by state agencies. The department provides adequate oversight for consultant and service contracts over \$10,000, but it does not enforce controls for the award of all contracts under \$10,000. State agencies do not always award or manage state contracts according to state contracting requirements and do not always award consultant and service contracts in the best interests of the State.

Controls for the Award of Consultant and Service Contracts Are Not Enforced

Our review of contracts awarded by five state agencies shows that as many as 73 percent of all contracts awarded by the State never undergo a review for compliance with state contracting requirements, and state agencies do not always comply with these requirements. Although primary responsibility for compliance with state contracting procedures rests with each state agency's management, the department has not conducted comprehensive audits of state agencies to ensure compliance with uniform standards for awarding contracts. As a result, the department cannot evaluate whether or not state agencies are awarding contracts in the best interests of the State. In one instance, for example, the State paid for services that a contractor did not provide.

Public Contracting Policies Are Not Complied With

We reviewed contracts at the departments of Aging, Forestry, Fish and Game, Mental Health, and Social Services and found that these state agencies generally benefit from the services they contract for and are typically satisfied with the contractors' performance.

However, state agencies do not always award or manage state contracts according to standards provided by the Public Contract Code and the State Administrative Manual. For example, in some instances state agencies failed to advertise contracts in the California State Contracts Register as specifically directed by the Department of General Services, split contracts to avoid the advertising requirements, and failed to complete and retain all evaluation forms in contract files. Furthermore, state agencies failed to obtain required competitive bids and failed to obtain the necessary Department of General Services' approval on contracts over \$10,000. Finally, state agencies used forms to initiate contracts that were not appropriate and were not approved by the Department of General Services or the Attorney General's office, and they paid for contract services not rendered by the contractor in accordance with contract terms.

Although most of the instances of noncompliance occurred because the state agencies did not have complete systems for processing contracts, one instance occurred because the deputy director of the Department of Forestry instructed contracting staff to circumvent controls. In another instance, the Department of Mental Health paid for a contract product it never received.

Contract Evaluations and Reports Are Not Prepared or Used

State agencies do not comply with two provisions of the Public Contract Code that are intended to provide greater accountability for and control over the award of consultant and service contracts. State agencies do not prepare and submit to the department post-evaluations of contract performance once the contractor has completed a project. Furthermore, state agencies do not request copies of evaluations retained by the department before awarding consultant contracts because they believe the process is time consuming, and because they believe they know contractors' reputations before awarding contracts.

In addition, most state agencies do not submit required quarterly reports on consulting contract activity. State agency staff gave numerous reasons for not submitting quarterly reports, including other work priorities and limited usefulness of the reports. These reports would be just as useful, and it would probably be a more efficient use of staff resources, if the reports were submitted annually rather than quarterly.

State Contracts With University
Staff and Personal Services
Contracts Based on Cost Savings

In 1983, at least 820 of over 44,000 faculty and staff of the 19 California State University campuses performed consultant services for state agencies. In 1984, about 950 of 46,000 faculty and staff performed consultant contract work for the State. Similarly, in 1983, at least 515 of approximately 168,000 faculty and staff of the University of California performed consultant contract work for the State, while in 1984, this number increased to at least 600 of the 151,000 total employees. Each of the two university systems has procedures to monitor employee work on contracts so that contract work does not interfere with employees' other university responsibilities.

To control personal services contracts for new functions, for expanding current programs, and for providing cost savings, the Governor has appointed the directors of the departments of Personnel Administration and Finance and the Legal Affairs Director of the Governor's Office to review and approve such contracts before the contracts are submitted to the State Personnel Board for approval. From March to October of 1985, the State Personnel Board has reviewed 21 of these contracts.

INTRODUCTION

In 1982, Chapter 1208, Statutes of 1982, was enacted making significant revisions to the procedures outlined in the Government Code for approval, evaluation, and control of consultant contracts.* Among other things, this legislation centralized the administration and control of consultant and service contracts within the Department of General Services. In so doing, the Legislature gave the Department of General Services' the responsibility for reviewing and approving all such contracts, while limiting the roles of the Department of Finance and the State Personnel Board to reviewing only individual contracts that these two control agencies believe are not in compliance with other standards or mandates.

Section 10356 of the Public Contract Code states that "consultant contracts" are those that

[provide] services which are of an advisory nature, provide a recommended course of action or personal expertise, have an end product which is basically a transmittal of information either written or verbal and which is related to the governmental functions of the State agency administration and management and state agency program management or innovation, and which are obtained by awarding a procurement-type contract, a grant, or any other payment of funds for services of the above type.

*Effective in January 1982, the Public Contract Code was enacted, thereby consolidating and revising the laws relating to public contracts.

Consultant contracts could, therefore, be used to obtain answers to specific questions, to design a system or plan, to provide workshops, seminars, and conferences for which paid expertise is retained by contract. The Public Contract Code exempts certain contracts, such as interagency agreements with local or state agencies, from the definition of consultant contracts.*

Section 10335 of the Public Contract Code does not use the term "professional services," but it nevertheless applies to "all contracts entered into by any state agency for services to be rendered to the State, whether or not the same involves the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor."

Section 19130 of the Government Code authorizes state agencies to enter into contracts for personal services under certain conditions. Although the code does not clearly define a "personal services contract," this type of contract is generally one that a state agency may award because it is seeking to obtain the skills or expertise that cannot be provided by civil service employees. Further, under certain circumstances, state agencies may also award personal services contracts for services that could be performed by civil service

*Throughout the remainder of the text, we use the term "state agencies" to describe various state governmental units, such as departments, boards, and commissions.

personnel. A personal services contract may be a consultant contract or a service contract and is, therefore, processed according to the applicable standards in the Public Contract Code.

The Office of Legal Services within the Department of General Services has oversight responsibility for consultant and service contracts. It is also responsible for developing the standard contracting procedures contained in the State Administrative Manual, beginning with Section 1200, which include guidelines for preparing and advertising contracts, using competitive bids, evaluating the need for the contract, and evaluating contractors once the contract is completed.

According to the Governor's Budget for the 1985-86 fiscal year, 101 state agencies awarded almost \$206 million for consultant and service contracts in fiscal year 1983-84.* In fiscal year 1984-85, at least 113 state agencies were allocated approximately \$290 million for consultant and service contracts. Consultant services commonly obtained by contracting included training, auditing, financial planning, research, and public relations. Services obtained under the service contracts included sanitation, transportation, and pest control.

*No state agency retains central records of contracts awarded for consultants or services; therefore, the reported amounts spent on consultant and service contracts are only estimates.

Section 10367 of the Public Contract Code requires the Auditor General to review the standardized contractor evaluation forms and evaluate their effectiveness and to conduct periodic audits of contracts in fiscal years 1982-83, 1983-84, and 1984-85 to determine whether the contracts have been evaluated effectively. In response to these requirements, the Auditor General has issued two reports assessing the Department of General Services' standardized evaluation forms as well as state agencies' compliance with reporting and evaluation guidelines for consultant contracts during fiscal year 1982-83.*

SCOPE AND METHODOLOGY

The purpose of this audit was to assess the effectiveness of contract evaluation forms for fiscal years 1983-84 and 1984-85. As part of this audit, we also reviewed state agencies' compliance with other provisions of the Public Contract Code that require state agencies to submit quarterly reports on consultant contract activity, prohibit work from beginning before contracts are approved by the Department of General Services, and require state agencies to advertise contracts in the State Contracts Register. Additionally, we report the

*The Auditor General's report assessing the draft evaluation forms is entitled "Review of Standardized Forms for Pre- and Post-Evaluation of Consulting Services Contracts," (Report P-273, January 1983). The Auditor General's report evaluating the reporting and evaluation of consulting service contracts in fiscal year 1982-83 is entitled "The State Has Not Adequately Monitored the Reporting and Evaluation of Consulting Services Contracts," (Report F-322, February 1984).

number of employees of the California State University and the University of California who perform consultant contract work for state agencies. Finally, we reviewed the State's use of personal service contracts awarded as a way of saving costs.

To evaluate the effectiveness of the pre- and post-evaluation forms in fiscal year 1983-84, we examined contracts at the Department of General Services that had been reviewed and approved by the department's attorneys. For fiscal year 1984-85, we reviewed at least 30 contracts retained at each of the following five state agencies: the Department of Aging, the Department of Fish and Game, the Department of Forestry, the Department of Mental Health, and the Department of Social Services. Also during our review of files at the five state agencies, we assessed the agencies' compliance with requirements to document advertising, to prevent contractors from beginning work before approval of the contract, and to include appropriate performance and cost schedules in the contract. Further, we selected three completed contracts at each state agency to determine whether the contractors successfully completed the contracts and whether the services were useful to the agencies.

To evaluate compliance with quarterly reporting requirements, we identified all state agencies in the 1985-86 Governor's Budget that were allocated funds for external professional and consultant services for fiscal years 1983-84 and 1984-85. We compared these state agencies with state agencies that sent quarterly consultant contract reports to

the Auditor General, and we surveyed all state agencies that did not file reports in each fiscal year to determine whether state agencies that did not submit reports also spent funds for consultant services. From this information, we measured the rate of compliance with the Public Contract Code provision requiring quarterly reporting.

In addition, we identified the number of employees of the California State University and the University of California who performed work on state contracts by matching names of university employees with names on the State Controller's tax records that detail information on compensation to consultants. Also, we received information from each of the university systems about employees who performed work on state contracts either through the university itself or through campus foundations. Further, we reviewed policies established by each university system for employee consulting activities.

Finally, we reviewed the system established to award personal services contracts as a means of saving costs. We reviewed records at the Department of Personnel Administration and the State Personnel Board, and we interviewed the attorney at the Attorney General's office involved with this issue.

AUDIT RESULTS

I

THE DEPARTMENT OF GENERAL SERVICES DOES NOT MONITOR THE AWARDING OF ALL CONSULTANT AND SERVICE CONTRACTS

The Department of General Services (department) has not adequately monitored all contracts awarded by state agencies to ensure that state agencies comply with provisions of the Public Contract Code and the State Administrative Manual for consultant and service contracts. The department reviews contracts over \$10,000 to ensure that they are awarded in accordance with state statutes and guidelines, but the department does not enforce compliance with requirements for the awarding of all consultant and service contracts under \$10,000. Although primary responsibility for compliance with state contracting procedures rests with each state agency's management, because of a lack of staff resources, the department has not conducted comprehensive audits of state agencies to ensure that they comply with uniform standards for awarding contracts. As a result, the department cannot evaluate whether or not state agencies are awarding contracts in the best interests of the State.

Authority for Contract Review

Sections 10335 and 10360 of the Public Contract Code state that, unless specifically exempted, a consultant or service contract is

not valid if it has not been reviewed and approved by the department. In addition, Public Contract Code Section 10371(b) and Section 1206 of the State Administrative Manual require the department to review and approve all consultant contracts awarded by a state agency to the same individual or firm within a 12-month period when these contracts total more than \$10,000. Section 10366 of the Public Contract Code and Section 1216 of the State Administrative Manual state that the department must also approve any amendment that modifies the amount of a contract. The department views its responsibilities for contract oversight under Section 1203 of the State Administrative Manual as ensuring that the best interests of the State are preserved, that state agencies comply with laws, rules, and regulations, and that expenditures are made as wisely and economically as possible considering the needs of the agencies. By restricting contracts that must be approved by the department, the Public Contract Code and the State Administrative Manual allow state agency management to award contracts for \$10,000 or less.

Because no state agency retains information about all contracts entered into by the State by type of contract, we could not develop information on the precise number of contracts that undergo a review by the department and the number of contracts awarded by state agencies under their delegated authority. However, our review of state agency files indicates that most consultant and service contracts awarded to independent contractors are for \$10,000 or less and are awarded by state agencies under delegated authority. As Table 1

indicates, 73 percent of the consultant and service contracts awarded by five state agencies in fiscal year 1984-85 were for \$10,000 or less and thus awarded without the department's review.

TABLE 1
CONSULTANT AND SERVICE CONTRACTS
AWARDED BY FIVE STATE AGENCIES
FISCAL YEAR 1984-85

	<u>\$10,000 or Less</u>	<u>\$10,001 or More</u>	<u>Total</u>
Department of Aging	69 (90%)	8 (10%)	77 (100%)
Department of Fish and Game	125 (59%)	86 (41%)	211 (100%)
Department of Forestry	137 (76%)	44 (24%)	181 (100%)
Department of Mental Health	80 (68%)	38 (32%)	118 (100%)
Department of Social Services	<u>99 (89%)</u>	<u>12 (11%)</u>	<u>111 (100%)</u>
Total	<u>510 (73%)</u>	<u>188 (27%)</u>	<u>698 (100%)</u>

Contracting Procedures Are Not Audited

In 1981, the Auditor General recommended that the department conduct comprehensive audits of state agencies' contracting procedures. Such audits would include a review of procedures used to award contracts under state agencies' delegated contracting authority as well as a review of state agencies' compliance with provisions of the Public Contract Code. However, the department has not conducted these audits. Primary responsibility for compliance with state statutes, regulations, and rules must rest with the management of state agencies, but by not

auditing agency compliance, the department has not fully met the intention of the Legislature specified in Section 10355 of the Public Contract Code and the responsibility set forth in the State Administrative Manual requiring the department to ensure that all state contracts are awarded in the best interests of the State.

The manager of the department's audit section said that, as required by the Public Contract Code, the department started audits of three state agencies that have been granted exemption from the department's review for all contracts under \$50,000. However, because of other workload priorities, the department has not undertaken periodic audits of state agencies to measure compliance with contracting procedures. The audit section has recognized the need for such audits in its annual workplan, but the audit section did not have sufficient staff resources to accomplish the audits. The manager of the audit section pointed out that there are other items in the workplan that cannot be completed this year for the same reason.

Even though the department reviews and approves contracts that have the greatest dollar value, those contracts over \$10,000, the potential for greatest misuse of state funds lies with the contracts that are \$10,000 or less because most consultant and service contracts are within this range and undergo no external review. During our review of five state agencies, we found that state agencies do not always implement contract management systems or award contracts under their delegated authority according to standards provided by the Public

Contract Code and the State Administrative Manual. As will be seen from the instances of noncompliance presented in the next section of this report, the department should conduct periodic audits of all state agencies to correct improper or inefficient contracting practices.

II

STATE AGENCIES DO NOT ALWAYS MANAGE CONTRACTS IN ACCORDANCE WITH STATE CONTRACTING REQUIREMENTS

State agencies do not always award or manage state contracts according to the standards specified by the Public Contract Code and the State Administrative Manual. Because of incomplete contract management systems or because of direction from state agency management to circumvent the controls, some state agencies have awarded consultant and service contracts that were not in the best interests of the State. State agencies have failed to advertise contracts in the California State Contracts Register as specifically directed by the Department of General Services, split contracts to avoid the advertising requirements, and failed to obtain required competitive bids. Moreover, agencies failed to complete or retain all evaluation forms in contract files and failed to obtain the necessary Department of General Services' approval on contracts over \$10,000. Finally, agencies used forms to initiate contracts that were not appropriate and were not approved by the Department of General Services or the Attorney General's office, and they paid for services not rendered by the contractor in accordance with contract terms. During our review of contracts awarded by the departments of Aging, Fish and Game, Forestry, Mental Health, and Social Services, we found that state agencies generally benefit from the services they contract for and that they are typically satisfied with contractors' performance on contracts.

According to Section 10355 of the Public Contract Code, the Legislature's intent in providing uniform procedures for the award of state contracts is to achieve accountability, reduce fiscal expenditures, and ensure that state agencies apply cost-benefit standards, standards for competitive bidding, and standards for determining the benefit of such contracts. Each state agency's management is responsible for ensuring that contracts are awarded according to established procedures.

Advertising Contracts in the California State Contracts Register

Section 14825 et seq. of the Government Code requires state agencies to submit information about contracts to the Department of General Services (department) for advertising in the California State Contracts Register. The code allows the department to exempt a contract from advertising when the contract must be awarded in emergency for public necessity, and it allows the department to exempt classes of contracts from advertising if necessary. Under its authority, the department requires state agencies to advertise all contracts for \$500 or more.

The state agencies we reviewed generally complied with the advertising requirements and either submitted for advertising those contracts of \$500 or more or requested the appropriate exemption. However, of the 32 contracts we reviewed, we did find two instances in which agency management directed staff to circumvent the advertising

requirement. In one instance, the Department of General Services denied a request from the Department of Forestry to exempt from advertising a contract for a study on redwood sprouting. In this case, the Department of Forestry had already selected a contractor. In spite of the advertising requirement and the department's denying the request for exemption, the deputy director for resource management in the Department of Forestry instructed the contracting staff to award the contract on a sole-source basis for \$8,176. The deputy director believed the Department of Forestry would lose credibility with the prospective contractor if it advertised the contract in the State Contracts Register.

In the second case, the Department of Forestry split a contract to avoid the advertising requirement. The assistant to the Director of the Department of Forestry instructed the contract officer to award two contracts of \$499 each to the same contractor to prepare material for a public service announcement. The assistant to the director wanted to award the contracts to this contractor because the contractor resided in the area that was the subject of the public service announcement. The contracts were signed by the same deputy director who approved the contract for the redwood sprouting project mentioned above.

The Legislature created the California State Contracts Register to help conserve and protect the revenues of the State by efficiently and prudently using state funds to procure services. The

Legislature also intended that public advertising of state contracts would encourage increased participation and competition by all business firms in the State because these firms would have adequate notice of available state contracts. The failure of state agency management to advertise in the California State Contracts Register inhibits competition among vendors and restricts state agencies from ensuring that all contracts are awarded in the best interests of the State.

Obtaining Competitive Bids

Sections 10340 and 10373 of the Public Contract Code require state agencies to obtain three competitive bids or proposals for each consultant and service contract they award, unless the contract meets certain conditions. Contracts are exempted from this requirement if they must be made in an emergency to preserve public health, welfare, or safety or to protect public property. State agencies are also exempted from obtaining at least three competitive bids when they have advertised in the California State Contracts Register, solicited all contractors known to the agency, and received fewer than three bids.

State agencies do not always obtain multiple bids on consultant and service contracts. Of the 124 contract files we reviewed at five state agencies that were not otherwise exempted from competitive bidding, 81 (65 percent) contract files did not contain evidence that the state agency staff attempted to identify more than one bidder for the services. Thirty-one of these contracts were

awarded for personal services for which the state agency was seeking the expertise of a particular individual. However, at least 50 of the contracts could have been awarded through the competitive bidding process. Furthermore, state agencies attempted to obtain multiple bids for only 3 of the contracts that were less than \$500 and that were not required to be advertised in the California State Contracts Register.

The lack of clear procedures is one reason that state agencies have not pursued competitive bids in all cases. In requesting and being granted exemptions from advertising individual contracts in the California State Contracts Register, three of the five contracts officers we spoke with believed that, when the department exempted a contract from advertising, the department was also exempting the agency from obtaining competitive bids. These contracts officers believed that the department's exemption from advertising authorized an agency to award a contract on a sole-source basis even if the agency did not request an exemption from obtaining competitive bids. However, the department analyst responsible for processing requests for exemption from advertising said that the department exempts contracts only from the requirement that they be advertised in the California State Contracts Register; the department does not exempt a state agency from obtaining at least three competitive bids before awarding the contract unless the agency specifically requests such an exemption and can justify that exemption.

Completing and Retaining Evaluations

Sections 10338, 10367, and 10368 of the Public Contract Code and Section 1212.1 of the State Administrative Manual require state agencies to prepare standardized evaluations of consultant and service contracts before the contracts are awarded. The department developed a form that, if completed, provides the means to assess the appropriateness of obtaining services by contract and the methods of identifying qualified bidders. Before a contract is awarded, a state agency must prepare a justification of the contract that includes information about the intended usefulness of the contract and the proposed means of competitive bidding. The Public Contract Code, along with guidelines established by the department in the State Administrative Manual, requires agencies to retain pre-evaluation forms in each contract's permanent file and to submit pre-evaluation forms to the department with proposed contracts that require the department's review and approval.*

For fiscal year 1983-84, the state agencies we reviewed complied with the evaluation requirements for those contracts over \$10,000 by submitting evaluation forms along with all contracts for the

*We use the term "pre-evaluation" to denote those forms that state agencies complete before the contract is awarded.

department's review and approval. Only one of the 26 consultant contracts we reviewed failed to have a pre-evaluation form submitted along with the contract package.

State agencies comply with the requirement to submit evaluations to the department justifying the need for contracts because the department monitors and enforces this provision of the law. Staff of the department's Office of Legal Services review proposed contract packages before the packages are submitted to an attorney to ensure that the pre-evaluation form is included. If the form is missing, the staff direct the state agency to submit it.

However, our review of 152 contract files for fiscal year 1984-85 shows that state agencies do not always prepare forms for those contracts awarded under delegated authority. Further, they do not always retain copies of the forms prepared for contracts that the department reviews. As the following table indicates, four of the five agencies we reviewed do not always fully prepare or retain pre-evaluation forms in the contract files.

TABLE 2
CONSULTANT AND SERVICE CONTRACTS
WITH REQUIRED PRE-EVALUATIONS
FISCAL YEAR 1984-85

	<u>Contracts Reviewed</u>	<u>Pre-Evaluations Partially Completed</u>	<u>Pre-Evaluations Missing</u>
Department of Aging	30	7 (23%)	13 (43%)
Department of Fish and Game	30	11 (37%)	10 (33%)
Department of Forestry	32	2 (6%)	6 (19%)
Department of Mental Health	30	0 (0%)	0 (0%)
Department of Social Services	<u>30</u>	<u>7</u> (23%)	<u>1</u> (3%)
Total	<u>152</u>	<u>27</u> (18%)	<u>30</u> (20%)

Contracts officers at the four state agencies reported that the evaluations were missing from the contract files because of an oversight by contracting staff. Evaluation forms are a method of achieving control in awarding contracts, and preparing the forms requires the state agency to develop sound proposals that meet the goals of the agency's program before the contract is awarded. The evaluation forms also provide an audit trail for compliance reviews and force state agency personnel to document efforts to comply with contracting requirements.

Obtaining Required Department
of General Services' Approval

Sections 10366 and 10371 of the Public Contract Code as well as Section 1206 of the State Administrative Manual require state agencies to obtain the Department of General Services' approval before awarding contracts totaling over \$10,000 to one firm in one year and before executing amendments to contracts increasing the contract amount above \$10,000. For example, at the Department of Forestry, controls failed to prevent payment on a contract over \$10,000 without the department's prior approval. The Department of Forestry awarded this \$28,000 contract for a study of ways to control Dutch Elm Disease, but it did not transmit this contract to the department for approval. The chief of the Department of Forestry's accounting office reported that the staff should not process payments on contracts and the State Controller should not issue payments without the appropriate department signature on the face-sheet of contracts. Because of an oversight, this contract did not have the department's approval. Nevertheless, the Department of Forestry's accounting office staff processed five of the contractor's payment invoices, which the State Controller paid before the contracts office obtained the department's approval. These payments totaled almost 23 percent of the contract amount.

Use of Unapproved and Inappropriate Contract Forms

Sections 1212.1 and 1212.2 of the State Administrative Manual require state agencies to use a standard form for executing a contract and to include certain standard terms in the contract. The department and the Attorney General's office have approved the forms and additional provisions to ensure that state contracts are legally sound. The additional provisions include provisions for holding the State harmless for injuries, clarifying the independent contractor's status, and modifying or amending the terms of the contract.

Two of the five agencies in our review, the Department of Social Services and the Department of Aging, use unapproved forms to enter into consultant contracts. These forms lack many standard contract elements. Failure to use the standardized forms, which are technically the only approved state forms for contracts, places the State at risk for expenses that may be incurred as a result of contract disputes or contractor accidents.

For example, in contracting for consultant and service contracts, the Department of Social Services uses a form called a "service authorization" that is designed for use in the Health and Welfare Agency. According to contracts office staff, this method of contracting is used in addition to the standard state form prescribed by the State Administrative Manual, and the method is designed to handle certain contracts for \$10,000 or less. A review of the

Department of Social Services' records indicates that the service authorizations are used to award contracts for services and for consultation by experts and to distribute small grants for the development of proposals. Although contract office staff said that these service authorizations are intended for contracts of small amounts, 46 (58 percent) of the 80 consultant and grant contracts awarded using this method in fiscal year 1984-85 ranged from \$2,000 to \$9,999.

Even though the service authorizations contain all of the standard terms found in the form prescribed by the State Administrative Manual, the service authorization is not signed by the contractor. The Department of Social Services sends a copy of the service authorization to the contractor, but the contracts officer admitted that the service authorization could be sent after the contractor has already begun to provide services or after the services have been provided. The contracts officer said that eliminating the signature step allows the agency to process the contracts more quickly.

In contrast to the Department of Social Services, the Department of Aging uses a contract form that is signed by the contractor but that does not contain any of the standard terms authorized by the department and the Attorney General's office, including terms that specify that the provider of services is not a state employee, is an independent contractor, and will not hold the State liable for injuries or damages by the contractor in carrying out

the contract. The Department of Aging uses this contract form, which can also be used as an invoice, to contract with consultants who attend or conduct seminars.

Both state agencies reported that they use these methods for certain types of contracts that must be processed quickly. Typically, these contracts are for services such as expert witness testimony, participation at a conference, or professional consultation. However, because the forms used by the Department of Social Services and the Department of Aging were not appropriate and were not approved by the department, the State was not protected against legal liability for all consultant and service contractors.

Payment for Contract Services Not Rendered

Section 10379 of the Public Contract Code allows state agencies to make progress payments to contractors for work performed or costs incurred in completing a contract provided that at least 10 percent of the contract amount is withheld pending completion of the contract and an evaluation of the contractor's performance. This provision ensures that contractors fully adhere to the terms of their contracts before the State renders final payment. At the five state agencies, we reviewed 15 contracts with the contract coordinators to determine whether the contracts were successfully completed and whether the products contracted for were useful to the agency. All but one of the contract coordinators surveyed reported that the contractors

fulfilled the terms of their contracts. Further, all 14 believed that the products were useful to the agencies' objectives.

Although most contractors appear to successfully complete their state contracts, one of the contract coordinators we surveyed approved the final payment to a contractor even though the contractor failed to complete the product required in the contract. As a result, the contract coordinator allowed the State to misspend the federal funds allocated to this project.

In February 1984, the Department of Mental Health awarded a \$34,996 contract to study the emotional impact of relocation efforts on the victims of the 1983 Coalinga earthquake. The results of the study were due by June 30, 1984, and were intended to help identify the most suitable type of shelters for victims of future earthquakes. Although administered by the State, the contract was funded entirely by federal funds. The contract was managed by two different staffs within the Department of Mental Health, and both of the contract coordinators had indications during the course of the contract that the contractor was not likely to complete the study by the agreed upon date. To accommodate the lack of progress, the contract coordinators agreed to two amendments extending the term of the contract. During the extended period, the contract coordinators continued to approve payments on invoices from the contractor. When the contractor submitted the final payment invoice, one of the contract coordinators approved the final payment and closed the contract even though the contractor had not completed the study or submitted the final report.

The contract coordinator who closed the contract reported that he did so after discussing the problem with a staff person of the federal agency sponsoring the study. The contract coordinator believed that making the final payment was the only way to close the contract and reduce state administrative costs. However, neither the contract coordinator nor the member of the federal agency had the authority to authorize payment of public funds for services not rendered. The contract coordinator could have terminated the contract because the terms of the contract allowed the State to terminate it if the contractor failed to meet the contract requirements promptly. The contract coordinator did not, however, consider terminating the contract and attempting to recover funds already paid to the contractor during the previous year. By authorizing full payment to a contractor that had not fulfilled the terms of the contract, the contract coordinator violated Section 10379 of the Public Contract Code.

III

STATE AGENCIES DO NOT ALWAYS PREPARE AND USE ALL REQUIRED CONTRACT EVALUATIONS AND REPORTS

State agencies do not always comply with certain provisions of the Public Contract Code that are intended to provide greater accountability for and control over the award of consultant and service contracts. State agencies do not prepare and submit to the Department of General Services (department) post-evaluations of contracts once contractors have completed the projects.* Furthermore, state agencies do not review evaluations retained by the department before awarding consultant contracts. In addition, most state agencies do not submit required quarterly reports that show consultant contract activity.

Preparation and Review of Post-Evaluations

State agencies do not always prepare post-evaluations for the contracts that they award, and they do not review copies of evaluations on file with the department before awarding a contract to an individual or firm that has performed work for the State under a previous contract. We reported these same problems in our 1981 audit report on the administration of state contracts.

*We use the term "post-evaluation" for evaluations of the contractors' performance prepared after the contract terminates.

Sections 10347, 10367, 10369, and 10370 of the Public Contract Code require state agencies to complete a post-evaluation for each consultant and service contract of \$1,000 or more and to file the post-evaluation with the department's Office of Legal Services within 30 days after completion of the contract. Section 1212.1 of the State Administrative Manual requires such evaluations of all contracts, regardless of amount. Furthermore, Section 10371 of the Public Contract Code states that no state agency may award a consultant contract unless the agency has reviewed any post-evaluation forms on file at the department for the prospective contractor. The Public Contract Code does not, however, require state agencies to review post-evaluations before awarding contracts for services. Finally, Section 10379 of the Public Contract Code allows state agencies to withhold 10 percent of the contract amount until the contract is completed and the contractor's performance has been evaluated.

Post-evaluations thus assess the contractor's performance in doing the work or delivering the services specified in the contract and assess whether the product of the contract was useful and furthered the objectives of the agency. The post-evaluations also provide state agencies with information that enables them to determine whether a potential contractor has satisfactorily completed previous state contracts and thus allows them to protect the interests of the State in awarding contracts.

Of the 124 completed contract files at the five state agencies in our review, 97 (78 percent) lacked post-evaluations. Contract coordinators failed to prepare post-evaluations for 22 (88 percent) of the 25 contracts over \$10,000 and 75 (76 percent) of the 99 contracts under \$10,000. The following table depicts state agencies' compliance with post-evaluation requirements.

TABLE 3
CONSULTANT AND SERVICE CONTRACTS
LACKING POST-EVALUATIONS
FISCAL YEAR 1984-85

	<u>Contracts Completed</u>	<u>Post- Evaluations Missing</u>
Department of Aging	26	17 (65%)
Department of Fish and Game	18	11 (61%)
Department of Forestry	24	16 (67%)
Department of Mental Health	27	24 (89%)
Department of Social Services	<u>29</u>	<u>29</u> (100%)
Total	<u>124</u>	<u>97</u> (78%)

The five contracts officers reported that they gave low priority to completing post-evaluations because they believed the forms were never used and thus had little value. These forms, however, are useful to state agency management in ensuring that contractors fulfill all of the terms of their contracts before the state agencies make final payment. Without providing information about a contractor's overall performance, state agency management cannot fully protect the State from contractors who may fail to perform adequately the services required by the contract.

According to records at the department's Office of Legal Services, few state agencies ask to review post-evaluations before awarding consultant and service contracts. The staff of the Office of Legal Services began recording requests for post-evaluations in May 1985, and from then until November 1985, the Office of Legal Services received at least 5,326 contracts and amendments for review. However, during that time, only 25 state agencies asked to review post-evaluations of 125 contractors.

The Public Contract Code does not require state agencies to request post-evaluations before awarding contracts for services; therefore, state agencies do not do so. State agencies also do not request post-evaluations before awarding consultant contracts. One reason that state agency staff do not request post-evaluations for consultant contracts is that the Public Contract Code specifies that only the director of a state agency may request the post-evaluation from the department. Since the state agencies enter into numerous contracts during the year, obtaining post-evaluations can be time-consuming for the state agency directors, contracts officers, and other management. The department's staff member who retains the post-evaluations has said that state agencies have complained about the need for the letter to be from the director. The chief of the department's Office of Legal Services said that post-evaluations for consultant contracts must be requested by state agency directors, but believes that this responsibility may be delegated.

Another reason that staff do not request post-evaluations from the department, according to the contracts officers we surveyed, is that the staff believe they already know a contractor's professional reputation without reviewing the information in the department's file. Relying on personal knowledge may not always be sufficient. For example, one contract coordinator we surveyed reported that she knew of a particular contractor's reputation as an expert in his field before awarding a contract for research study, but she was not aware that he also had a reputation for failing to complete work on federal contracts. In this case the contractor did not fulfill the terms of the state contract. The contract coordinator indicated that she would never recommend him for another state contract, but because she did not prepare a post-evaluation, other state agencies cannot benefit from this information.

One way for the department to easily monitor state agencies is to see that they request post-evaluations before awarding contracts is by requiring state agency staff to indicate the results of a post-evaluation review on the contract pre-evaluation form. As indicated earlier in this report, state agencies are required to transmit this form to the department along with contracts that are over \$10,000 and that require the department's review and approval.

Quarterly Reporting

Most state agencies we reviewed did not submit required quarterly contracting reports for fiscal years 1983-84 and 1984-85. Section 10359 of the Public Contract Code requires each state agency to prepare a quarterly report listing consultant contracts and providing information about those contracts. State agencies are to submit the report to the Auditor General, the Legislative Analyst, the Department of Finance, the Senate Finance Committee, and the Assembly Ways and Means Committee. The reports for the first and second quarters of a fiscal year provide information about consultant contracts entered into during the three months of each respective quarter. The third quarter report includes information for the previous nine months, and the fourth quarter report captures information for the entire year.

According to the 1985-86 Governor's Budget and information supplied by state agencies to the Auditor General's Office, 86 state agencies spent funds for consulting and professional services in fiscal year 1983-84. However, only 33 agencies (38 percent) submitted three or all four of the required reports for that year. For the first three quarters of fiscal year 1984-85, 99 state agencies spent funds for consulting and professional services, but only 26 (26 percent) submitted all three reports. Some of these agencies reported that they did not know of the requirement and, therefore, did not comply with the Public Contract Code. Others reported that they knew about the requirement but simply did not comply, inadvertently overlooked the

requirement, or were waiting for someone to ask for the reports. One agency reported that it did not have sufficient staff to prepare the reports.

Although the Public Contract Code gives the department the responsibility for overseeing state contracting procedures, the code does not direct state agencies to submit quarterly reports to the department. Therefore, no entity has enforced the reporting requirement, and only a small portion of state agencies spending funds on consultant contracts report the required information.

To determine whether state agencies' failure to comply with the Public Contract Code had any detrimental effect, we asked 20 analysts with the Legislative Analyst's office and the Department of Finance whether the reports were useful for monitoring department operations.* These analysts had responsibility for the state agencies that had been regularly submitting quarterly reports. Most of the analysts reported that they read the reports for information only, and only three believed the reports were not useful at all. Fifteen of the analysts believed that the reports were not needed on a quarterly basis and that they could get the same information if the reports were submitted semi-annually or annually. Because most analysts said that they used the reports only for information, it might be a more

*The Office of the Auditor General would only use the reports for requested audits and, therefore, would require annual rather than quarterly reports.

efficient use of staff resources to require state agencies to submit annual rather than quarterly reports on consultant contract activity. Additionally, more state agencies may comply with the reporting requirement if they were required to report less frequently. If more state agencies did submit reports, there would be more centralized information about contracts awarded for consultant services.

IV

STATE CONTRACTING WITH UNIVERSITY EMPLOYEES AND PERSONAL SERVICES CONTRACTS BASED ON COST SAVINGS

State agencies frequently award contracts to employees of the California State University and the University of California. State agencies also award personal services contracts based on cost savings. As part of this audit, we reviewed these types of contracting.

State Contracting With California State University and University of California Employees

State agencies frequently award consultant contracts to employees of the California State University and the University of California. Using data supplied by the two universities, we estimate that in 1983, at least 820 of over 44,000 employees of the 19 California State University campuses performed consultant services for state agencies; in 1984, over 950 of approximately 46,000 of these employees performed consultant work for the State. Similarly, at least 500 of approximately 168,000 employees of the University of California worked on state contracts in 1983; this number increased to over 600 of approximately 151,000 employees in 1984. Because no state entity monitors the number of contracts awarded to individual contractors, the number of university employees performing contract work for the State during 1983 and 1984 may be understated.

Effective January 1983, Section 14780.7 of the Government Code required state agencies to send requests for proposals for all research projects to each campus within the two university systems for distribution to interested faculty when the agencies made the proposals available to private sources. This law excluded proposals for agricultural and medical research services. In September 1983, the Department of General Services (department) added Section 1241.4 to the State Administrative Manual, thus implementing the law. However, that same month, the Legislature repealed Section 14780.7 of the Government Code.

Although the Legislature repealed Section 14780.7 of the Government Code in September of 1983, the State Administrative Manual coordinator at the Department of Finance indicated that the Department of General Services did not remove Section 1241.4 from the State Administrative Manual until December 1984. As a result, the State Administrative Manual required state agencies to direct requests for proposals to the universities for 16 months after the Legislature repealed the authorizing statute. Furthermore, even though the Government Code no longer requires that requests for proposals be circulated among university faculty, state agencies still seek qualified university employees to perform state contract work. Some of the state agencies in our review, as well as the two university systems, believe that such contracting practices benefit both the State and the universities.

In addition to performing work for the State, university employees also perform contract work for the federal and local governments as well as for private firms and associations. Because there is extensive contract work available from numerous sources, each of the two university systems has policies on employee contracting. The California State University's Memorandum of Understanding with the faculty limits additional employment to 25 percent over an employee's full-time university position. According to a university official, each campus's nonprofit foundation is responsible for monitoring compliance with this limitation since most external contracts are coordinated by the foundations. However, because state agencies frequently contract with individuals directly instead of through the campus foundations, the foundations' ability to strictly enforce this policy is limited to those activities coordinated through the university. The California State University presently is processing regulations that will require faculty to prepare conflict of interest statements.

Although the University of California does not place a numerical limitation on employees' contracting activities, it requires that department chairpersons annually review the performance of each employee for possible recommendations of advancement or discussion about performance concerns. To facilitate this review, the university requires each faculty member to report annually all outside professional activities related to his or her academic specialty whether or not the activity was compensated or administered through the

university. The faculty member's department chairperson reviews the reported activities to ensure that the faculty member is fully pursuing university goals, including teaching and research obligations, as well as providing services to the university and the public.

Personal Services Contracts Based On Cost Savings

Section 19130 of the Government Code allows state agencies to contract for personal services if the agency clearly demonstrates that the proposed contract will result in overall cost savings to the State. Before a cost-based contract may be executed under Section 19130(a), a state agency must document the benefits of awarding such a contract, showing that a cost savings will be achieved without displacement of existing civil service employees and demonstrating that the rates paid to contractors are at the industry's level and do not significantly undercut state pay and benefit rates.

Before personal services contracts based on cost savings may be executed, Section 19131 of the Government Code requires that they be reviewed and approved by the State Personnel Board and that relevant employee organizations have the opportunity for comment and appeal. Further, although not required in the Government Code, the Governor has appointed a task force consisting of the Director of the Department of Personnel Administration, the Director of the Department of Finance, and the Legal Affairs Secretary of the Governor's Office to review and approve proposals for cost-based contracts before the state agency

transmits the final contract package to the State Personnel Board. According to its own records, the State Personnel Board reviewed at least 21 cost-based contracts from March to October 1985. Nineteen of these contracts were for janitorial and security services. The board disapproved only one of the 10 contracts that had completed the review process as of October 1985.

According to the Attorney General's office attorney representing the State Personnel Board, as of late January 1986, five law suits have been brought against the State by employee organizations alleging that certain contracts have violated standards specified in Section 19130 of the Government Code. Two of these suits were dismissed by the Sacramento Superior Court, while a third suit is pending litigation. The Attorney General's office is appealing the findings of the Superior Court in two other suits to the Third District Court of Appeal. The Superior Court found that each of the contracts in these suits violated provisions of the Government Code prohibiting contractor wages from significantly undercutting state pay and benefit rates.

CONCLUSION AND RECOMMENDATIONS

While the Department of General Services has provided adequate control for consultant contracts over \$10,000, the department has not provided adequate oversight of state agencies' awarding of contracts that are exempt from the department's review. We found that the five state agencies we reviewed did not always comply with some or all of the following state contracting procedures: preparing and retaining evaluation forms, advertising contracts publicly in the California State Contracts Register, using appropriate and approved forms to execute contracts, and authorizing work to begin and paying for services without submitting contracts to the department for review and approval. Furthermore, one state agency paid for a product it never received.

Although some instances of noncompliance resulted because of incomplete systems for processing contracts, some appear to have resulted because state agencies' upper management directed staff to circumvent the controls. Moreover, because of inadequate staff resources, the department has not established routine and comprehensive audits of state agencies that will ensure that these agencies comply with state contracting procedures.

In addition, most state agencies do not comply with provisions of the Public Contract Code that are intended to provide greater accountability and control over the award of consultant contracts. State agencies do not review post-evaluations before awarding contracts and do not submit quarterly reports on consultant contract activity.

A small number of employees of the California State University and the University of California perform work on state contracts. Both university systems monitor employees' outside professional activities to ensure that the employees fully perform university obligations.

Finally, state agencies have awarded contracts to private providers for personal services. However, these agencies must justify these contracts by demonstrating a measurable cost savings from such contracting and must obtain the State Personnel Board's approval before awarding the contracts.

RECOMMENDATIONS

To improve the management of consultant and service contracts and to increase compliance with state contracting procedures, the Department of General Services should implement the recommendations made by the Auditor General in 1981 and establish a comprehensive program for auditing state agencies' compliance with contracting policies. In particular, the department should periodically review each state agency's procedures for awarding contracts within its

delegated contracting authority and examine contract files to determine compliance with all provisions of the Public Contract Code.

Additionally, at the request of state agencies, the Department of General Services should review state agencies' need for a contracting method that allows them to procure the services of experts for testimony or participation in conferences more quickly. If the department finds that such a need exists, the department should develop the new method and publish accompanying guidelines in the State Administrative Manual. In the meantime, the Department of Aging and the Department of Social Services should discontinue using inappropriate forms for initiating contracts and begin using authorized forms for consultant and service contracts.


By June 1987, the Department of General Services should review the effectiveness of the post-evaluation process and propose recommendations to the Legislature to improve or eliminate the process. If the Department of General Services recommends to retain the post-evaluation system, it should revise the contract pre-evaluation form to include information about state agencies' reviews of post-evaluation files before awarding consultant and service contracts. The department should also periodically review a sample of pre-evaluations for all types of contracts to ensure that state agencies review post-evaluations before awarding contracts.

Additionally, the Legislature should amend the Public Contract Code to require that reports on consultant contract activities be submitted annually rather than quarterly. The Legislature should require that these reports be submitted to the Department of General Services, and it should assign responsibility for monitoring and enforcing state agencies' compliance to the Department of General Services.

Finally, the departments of Aging, Fish and Game, Forestry, Mental Health, and Social Services should establish complete systems for processing contracts to ensure that all files contain pre- and post-evaluation forms, that all contracts and amendments receive appropriate Department of General Services approval, and that contractors do not receive payment for services not rendered.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: April 7, 1986

Staff: Robert E. Christophel, Audit Manager
Eugene T. Potter, Audit Manager
Kathleen Herdell



State and Consumer Services Agency

OFFICE OF THE SECRETARY
915 Capitol Mall, Suite 200
Sacramento, CA 95814

(916) 323-9493

April 2, 1986

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 "J" Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

RESPONSE TO AUDITOR GENERAL'S REPORT - P-504

Thank you for this opportunity to respond to your draft report P-504 entitled "The State Needs to Improve Its Control of Consultant and Service Contracts."

I am pleased that you found that the Department of General Services is providing adequate oversight of contracts over \$10,000. By establishing this appropriate level of delegation of authority, the various State agencies are offered the opportunity to process the vast majority of contracts economically and efficiently while we are able to concentrate our resources on review of contracts which constitute the majority of the State funds expended.

As you noted in your report, it is essential for State agencies to manage all State contracts according to State contracting requirements. To ensure this procedure is followed, we will provide comprehensive audit coverage of State Agencies' processes for awarding contracts and the Agencies' compliance with contracting policies. We are in the process of redirecting resources to provide this audit coverage beginning in F.Y. 86/87.

We agree that there is an apparent problem with the contract evaluation system. Our preliminary reviews indicate that the system is apparently not used because the evaluation information generated is not perceived to be useful.

In addition, to obtain maximum utilization of the current system and avoid time consuming, costly control, the Department of General Services will conduct a thorough study of the effectiveness of this audit process as part of the systems control.

DEPARTMENTS AND PROGRAMS OF THE AGENCY

Building Standards Commission • Consumer Affairs • Fair Employment & Housing • Fire Marshal
Franchise Tax Board • General Services • Museum of Science & Industry • Personnel Board
Public Employees' Retirement System • Teachers' Retirement System • Veterans Affairs

Mr. Thomas W. Hayes
April 2, 1986
Page 2

If you have any questions, please contact William J. Anthony, Director,
Department of General Services, at 445-3441.

Sincerely,

A handwritten signature in cursive script that reads "Shirley Chilton".

SHIRLEY R. CHILTON
Secretary of the Agency

SRC:jy

cc: W. J. Anthony
E. Yost
C. Thrasher

DEPARTMENT OF AGING1020 19th STREET
SACRAMENTO, CA 95814TDD (916) 323-8913
(916) 322-5290

April 2, 1986

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

Mr. James S. Stockdale, Acting Secretary, Health and Welfare Agency, has asked me to respond to your draft report dated April 1986 entitled "The State Needs to Improve Its Control of Consultant and Service Contracts."

I have reviewed the findings in your report which pertain or which reference the Department of Aging and have discussed them with my staff. We do concur with some of the findings and have taken action to correct and implement several of your recommendations.

I issued to all staff an Administrative Memo (AM 86-3) on January 23, 1986 addressing the areas of concern identified in the Department's contracting procedures. This memo included, among other things, the use of both pre- and post-evaluation forms, approval of final payments and use of the State's Contracts Register. A copy of Administrative Memo 86-3 is attached.

I have further instructed our Contracts Officer to discontinue the use of our Consultant/Contract/Invoice form and prepare departmental contracts using the State's approved Standard Form 2 (Standard Agreement).

Thank you for the opportunity to comment on your report. I believe that actions that I have already implemented will positively strengthen the Department's contracting procedures.

Sincerely,

A handwritten signature in cursive script, reading "Alice Gonzales", is written over the typed name.

ALICE GONZALES
Director

Attachment

cc: Health and Welfare Agency

Department of Aging

ADMINISTRATIVE MEMO

NO. AM-86-2	
SUBJECT: Contracting Procedures	DATE ISSUED: January 23, 1986
	EXPIRES: December 31, 1986
REFERENCES: AM-84-34 SAM 1212.6 SAM 1204	SUPERSEDES: None
INQUIRIES SHOULD BE DIRECTED TO: Contracts Unit 2-0787	

A review by the Auditor General of the Department's procedures for contracting has identified several areas which need improvement.

The information below addresses only problem areas. See AM 84-34 for more specific information on the contracting process, or contact the Contracts Unit for assistance.

Among the specific problems noted by the Auditor General were:

1. The term of many contracts began before the contract was fully executed. (This refers to the practice of "backdating" contracts.)
2. In many instances, no Project Manager (departmental contact) was named in the contract.
3. The STD. 15-Contract Transmittal and Pre-Evaluation was not completed in all cases; was not completed prior to the start of the contract period; and/or was not completed fully.
4. The STD. 4-Contractor Evaluation Sheet was not completed in all cases; was not completed within 30 days of the completion of the contract; and/or was not completed and submitted prior to final payment on the contract.
5. In a few cases, final invoices were paid without formal sign-off by the Project Manager that the contract had been satisfied.
6. The STD. 16-Contract Award Report was not completed for all contracts in excess of \$5000; was not completed fully; and/or was not completed within 10 days of the date of contract award.
7. In a number of instances, no distinction was made between justification for Exemption from Advertising (in the State Contracts Register) and justification for not obtaining three competitive bids ("sole source") before awarding the contract.

In order to correct these problems, the following requirements are effective immediately.

1. Backdating Contracts

Except in the most extraordinary cases, no contract will have a starting date earlier than the date of final approval (either the Director's signature or approval by General Services, whichever prevails).

A minimum of two weeks should be allowed for contracts with individuals.

At least 30 days should be allowed for contracts which require Board Resolution or equivalent or which include considerable control language.

At least 60 days must be allowed for contracts which exceed \$10,000, since these contracts must be approved by General Services.

The CDA 58-Consultant Contract/Invoice form will no longer be used for contracts. Instead, it will be slightly modified and used only as an invoice form in conjunction with a "Special Consultant" version of the State Contract (STD. 2).

The Contracts Unit will determine when a "Special Consultant" contract is needed from the information provided on the CDA 55-Request to Process Grant or Contract.

2. Project Manager

The "Project Manager" is the Department employee designated as the primary liaison between the contractor and the Department and is the individual who certifies that a contract has been completed satisfactorily.

For short-term contracts, the Project Manager will be named in the contract. For longer-term contracts, where the Project Manager might change during the life of the contract, the Project Manager will be named in the letter transmitting the fully approved contract to the contractor. Any change in Project Manager during the term of the contract will be announced to the contractor in a subsequent letter.

3. STD. 15-Contract Transmittal

A STD. 15, fully completed on both sides, must be submitted to the Contracts Unit at the same time a contract is requested via the CDA 55.

4. STD. 4-Contractor Evaluation Sheet

Every completed contract, regardless of amount, requires a completed STD. 4 within 30 days of completion and before the final payment can be issued. The Project Manager is responsible for completing and signing the STD. 4.

The Contracts Unit will provide a blank copy of the STD. 4 on or before the expiration date of the contract.

5. Approval of Final Payment

The Contracts Unit will provide a copy of each completed STD. 4 to Accounting for use as formal approval of final payment. Accounting will not process a request for final payment on any contract without a completed STD. 4 signed by the Project Manager.

6. STD. 16-Contract Award Report

If the requested contract exceeds \$5000, a STD. 16 must be completed within 10 days of the date of award. The Project Manager is responsible for completing and signing the STD. 16.

If a STD. 16 is required, the Contract Unit will provide a blank copy of the form at the time the contract request is processed.

7. Exemption from Advertising vs "Sole Source"

The justification for exemption of a contract from advertising is not the same as the justification for not securing competitive bids ("sole source") in awarding a contract.

Exemption from Advertising

Certain types of contracts have been declared exempt from advertising (SAM 1212.6). Among the types are "travel/per diem only", contracts with governmental agencies, contracts with the State college and university systems, certain maintenance agreements, subvention contracts (nondiscretionary grants), and proprietary software contracts.

Other contracts may be exempted on an individual basis, if it can be established that such exemption is clearly in the best interests of the State. In most cases, the exemption will be approved if there is compelling evidence that (a) advertising would not produce more competition than is already known to the Department or (b) the time required to complete the advertising process would prevent the State from obtaining the service(s) required and thereby would preclude the State from doing its job.

An exemption from advertising in the State Contracts Register does not mean an exemption from obtaining competitive bids!

"Sole Source" or Non-competitive Bidding

State agencies are required to secure at least three competitive bids or proposals for each contract, except for certain specific cases (SAM 1204), or in those rare instances where three bids or proposals cannot be secured.

A "sole source" contract is awarded when the contracting State agency can clearly justify that there is only a single source for the service or that the State's interests are better served by exemption than by securing competitive bids.



ALICE GONZALES
Director

Memorandum

To : Thomas W. Hayes
Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Date : April 1, 1986

Subject: Audit of Consultant
Contracts

Telephone: ATSS (323) 8173

From : Director's Office

Mr. Stockdale has asked me to respond to your report, "The State Needs to Improve Its Control of Consultant and Service Contracts". We appreciate being given the opportunity to review the report in draft form.

On pages 25 & 26 of the report you discuss a Department of Mental Health Contract in which the Contractor was fully paid, without the Department having received the final report required by the contract. On page ii of the summary, in reference to the same contract, you state that the Department of Mental Health paid for a product it never received.

The comments in the report do not take into consideration the unique circumstances involved in the development and monitoring of this contract. The Contractor, Mr. Michael Durkin, an internationally known expert in his field, was selected to study the emotional impact of relocation efforts on the victims of the 1983 Coalinga earthquake. The Department of Mental Health acted as a "pass through" authority for the Federal Government. Both Mr. Durkin and the Department's Contract Coordinator were aware of this "pass through" relationship and throughout the term of this contract, Mr. Durkin maintained contact with NIMH. The contract envisioned ongoing consultation, as well as a final report. Mr. Durkin did provide ongoing consultation during the term of the contract. Further, Mr. Durkin indicates that NIMH has approved the submission of his final report in May, 1986.

While it is possible that errors were committed in the oversight of this contract, both the State and NIMH received consultation on a vital Mental Health issue. At worst, questionable judgment may have been exercised in not further amending the contract to extend its term, which would have allowed submission of the final report prior to final payment.

Page 29 of the report reveals that Mental Health, in addition to other departments, has not submitted post-evaluation forms on contracts to the Department of General Services, as required. The Department of Mental Health utilizes an extensive pre-evaluation process to select contractors and admittedly has not been as persistent with the post-evaluation process. A follow-up procedure has been implemented which will ensure future compliance.

Should you have additional questions, please feel free to contact me, or our Contract Manager, Robert Boggs on 323-8255.


D. MICHAEL O'CONNOR, M.D.
Director

DEPARTMENT OF SOCIAL SERVICES

Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

April 1, 1986

The State Needs to
Improve Its Control of
Consultant and Services
Contracts

Mr. Stockdale has asked me to respond to the DRAFT of the Auditor General's Report on Contracting dated April 1986.

The following is a list of the concerns detailed in the report, along with our responses:

CONCERN:

The Department of Social Services (DSS) uses unapproved forms to enter into consultant contracts.

RESPONSE:

DSS uses the Service Authorization form to enter into contracts for services such as "expert witness", "training" and other service contracts under \$10,000. The Service Authorization allows DSS to respond in a timely manner to such emergency needs as evaluating adoptive parents, providing needed testimony at court trials to protect families, and instructing staff concerning medical issues which may affect the decision making process with regard to granting or withholding disability benefits.

The Service Authorization, although not issued by the Department of General Services, contains all the liability clauses required by the State Administrative Manual. Further, the Service Authorization was originally approved by the Department of General Services' Legal Office as a viable contracting document.*

CONCERN:

Of the 29 folders checked by the Auditor General's Office, none contained the post evaluation document Std 4 required by the State Administrative Manual.

*The Auditor General's comment on this point appears on the bottom of page 56.

RESPONSE:

The Department of Social Services has made it a requirement for contracting that each project manager understand that a post evaluation Std 4 must be completed within 30 days of contract termination. In addition, language is placed in each contract informing vendors that an evaluation will be done.

Further, notices are sent to all departmental contract managers whose contracts have terminated requesting post evaluations.

Even with these efforts, however, the rate of completion of the Std 4 evaluation documents may not be sufficient to satisfy the State Administrative Manual Section 1218 requirement. That being the reality, DSS will begin to investigate methods for ensuring that the Std 4's are submitted to the Department of General Services in a timely manner.

If you have questions concerning this matter, please call me at 445-2077, or Mr. Robert T. Sertich, Deputy Director of Administration, at 445-4622.
Original signed by:

Linda S. McMahon

LINDA S. McMAHON
Director

cc: Governor's Office

bcc: Health & Welfare Agency
 Director's File 17-11
 Directors Reading 17-11
 Executive Secretariat 17-11
 R. Sertich 17-10
 J. Miller 7-180
 C. Rogers 7-747
 Chron 7-747

Auditor General's Comment: The DSS has not adequately formalized its agreements with contractors when using its Service Authorization form. Its contracts have not included all pertinent points of agreement, and its consultant contracts do not indicate that the provisions of SAM Sections 1240-1247 have been complied with. Furthermore, the DSS does not always provide its contractors with a copy of the Service Authorization form before they commence work, nor does the DSS always have the contractors sign the contracts. The Service Authorization form does not even have a signature block for the contractor to sign as does the State's standard contract form.

Memorandum

To : Thomas W. Hayes, Auditor General
Office of the Auditor General
660 J Street, Suite 300

Date : APR 2 1986

File No.:

Subject: Auditor General's
Report P-504

From : Office of the Secretary

We appreciate the opportunity to comment on your draft report entitled "The State Needs to Improve Its Control of Consultant and Service Contracts." Specific comments which have been received from the Department of Fish and Game and the Department of Forestry are as follows:

Department of Fish and Game:

"The report cites seven contract procedure discrepancies. We will respond to the four issues that pertain to the Department of Fish and Game (DFG). In addition, we wish to comment on one of the other issues. We also suggest that the first paragraph under CONCLUSION AND RECOMMENDATION in the final report be revised so it does not infer that each of the five agencies reviewed were deficient in all seven areas cited.*

1. Failure to prepare and retain pre-evaluation forms.

As the report notes, this occurred only in instances of contracts not requiring DGS approval. Procedures will be revised to include all contracts as required.

We certainly recognize our responsibility to comply with this legal requirement, but question the value of completing and retaining these forms for contracts exempt from DGS review. It appears these forms would be used for very few management purposes. Perhaps a change in the law is in order.

2. Failure to prepare and submit to DGS post-evaluation forms.

An investigation of this matter revealed that DFG contract coordinators do complete these forms in instances of poor performance on the part of a contractor. As the report noted, however, we have not prepared forms for all contracts. The contracting staff has developed procedures to insure that these forms are filed for each contract in the future as required by law.

*Auditor General's Comment: Text changed.

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However, this is another area in which we suggest a change of law might be beneficial. It seems to us that filing these forms only in instances of poor performance would fulfill the purpose of the requirement, with considerably less expense to the state than completing and filing one for every contract.

3. Failure to review post-evaluations before awarding consultant contracts.

DFG's contracting staff has been instructed to insure that this requirement is met with future consultant contracts before each is submitted to DGS for approval, or before it is awarded, if exempt from DGS approval.

We concur with the Auditor General's suggestion regarding legislation to allow appropriate staff other than directors to request contractor evaluations. However, we are apprehensive about their suggestion requiring the review of such evaluations before awarding each service contract. We feel this requirement would place an additional burden on the already slow and cumbersome state contracting procedures.

4. Failure to submit quarterly reports on consultant contract activity.

DFG contracting staff have been instructed to, and in the future will submit these quarterly reports as required by law.

We feel an affirmative response to the Auditor General's suggestion of legislation to reduce the frequency of these reports would be beneficial; but considering the apparent lack of interest in the reports which the recipients expressed to the Auditor General's staff, we wonder if the legislation shouldn't go a step further and eliminate the report altogether."

Department of Forestry:

"The major finding with respect to the Department of Forestry is presented on page 14 and relates to inappropriate intervention by senior management staff in the contract advertising process. The Department does not dispute the finding and has adopted the following plan of corrective action:

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Existing and new management employees will receive a training class and a "do's and don'ts" reference booklet to help them understand the ground rules of contracting. The booklet has been prepared. The training class will be presented in April.

The Contracts Office has been counseled that its control role includes denying inappropriate requests from any level of management. If pressure continues to be applied, the Contracts Office has been instructed to refer the issue directly to the division chief for resolution.

Other findings in the report include payment on an unapproved contract (page 20). Existing controls should not have failed with respect to the contract payment. Procedures appear to be correct, but enforcement of those procedures needs to be stronger. The appropriate corrective action is to conduct a training class for the unit with the objective of reviewing existing procedures and the reasons for following them carefully.

Procedures in the Contracts Office need to be reexamined and strengthened. The Department is redirecting a position into the unit to help handle workload in a more timely and effective fashion. In addition, the Department is adopting the Auditor General's staff recommendation to review automated contract systems in other agencies."

As you can see, these departments are taking appropriate steps to comply with the requirements of the Public Contract Code and the State Administrative Manual.



Gordon K. Van Vleck
Secretary for Resources

cc: Gerald Partain, Director
Department of Forestry

Jack Parnell, Director
Department of Fish and Game

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**cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps**